

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF PUBLIC SAFETY
PRIVATE DETECTIVE AND PROTECTIVE AGENT SERVICES BOARD

In the Matter of:

The License Denial of Kevin L. Monson,
d/b/a Northman Security

**FINDINGS OF FACT,
CONCLUSIONS,
AND RECOMMENDATION**

The above-captioned matter came on for hearing before Administrative Law Barbara L. Neilson commencing at 11:00 a.m. on Friday, May 5, 2000, at the Office of Administrative Hearings in Duluth, Minnesota. The hearing was held pursuant to a Notice and Order for Hearing dated December 20, 1999. The record closed at the conclusion of the hearing on May 5.

Michael R. Pahl, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103-2106, appeared on behalf of the Minnesota Private Detective and Protective Agent Services Board ("the Board"). John Fillenworth, Attorney at Law, Fillenworth Law Office, Ltd., Board of Trade Building, Suite 309, 302 West First Street, Duluth, MN 55802, appeared on behalf of the Applicant, Kevin L. Monson.

NOTICE

This Report is a recommendation, not a final decision. The Minnesota Private Detective and Protective Agency Services Board will make the final decision after reviewing the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact the Minnesota Private Detective and Protective Agency Services Board, 445 Minnesota Street, St. Paul, Minnesota 55104, telephone (651) 215-1753, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether or not Mr. Monson's application for an individual protective agent license should be denied as a result of his failure to demonstrate good character, honesty, and integrity under Minn. Stat. § 326.3381, subd. 3(3), and his making a false statement in his application for licensure in violation of

Minn. Stat. § 326.3381, subd. 3(2). In particular, the Board alleges that Mr. Monson's license should be denied based upon the following: (1) a District Court found that, while employed as a protective agent by Midwest Patrol, Mr. Monson breached his fiduciary duty to his employer, tortiously interfered with contractual relations, tortiously interfered with prospective contractual relations, breached the personnel policy manual, and engaged in unfair competition by diverting his employer's business to a company he formed to take business away from his employer; (2) Mr. Monson failed to disclose on his application for licensure the fact that he had been employed by Midwest Patrol; and (3) Mr. Monson engaged in unlicensed activity while conducting security services in the State of Wisconsin.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Applicant, Kevin L. Monson, is the owner of Northman Security, 918 Woodland Avenue, Duluth, Minnesota. The Applicant applied for an individual protective agent license in Minnesota in October of 1998.^[1]

2. The Applicant served in the Army and was stationed in Washington, D.C., where he served on the honor guard. He was honorably discharged in February, 1983.^[2]

3. The Applicant was employed by Fleming Foods (formerly known as Gateway Foods) in Superior, Wisconsin from March 4, 1989, to January 29, 1995, as a full-time security officer, then security supervisor.^[3]

4. In 1995, Fleming Foods decided to contract with another entity (Midwest Patrol, a division of General Security Services Corporation ("GSSC")) for the provision of security services at its plant rather than using its in-house security operation. Midwest Patrol's contract with Fleming ran from January 30, 1995, through January 29, 1996, with a thirty-day automatic extension. As part of the agreement, Midwest Patrol offered employment to acceptable existing Fleming security officers.^[4]

5. The Applicant was employed by Midwest Patrol as a security officer at the Fleming Foods location from January 30, 1995, to March 4, 1996.^[5] While employed by Midwest Patrol in approximately late 1995, the Applicant received Midwest Patrol's Personnel Policy Manual and acknowledged that he was responsible for becoming familiar with its terms. According to the Manual, "marketing and pricing information, customer lists, employee lists, payroll and financial information and business plans" were confidential information. The Manual exempted from the definition of "trade secret" information publicly disclosed by the client.^[6] The Midwest Patrol proposal and the Fleming-Midwest Patrol contract were not readily available to security guards, were not distributed, and the contents were generally not revealed by Midwest Patrol. The Fleming-Midwest Patrol contract contained pricing and financial information.^[7]

6. In April, 1995, the Applicant was given the position of post supervisor over the Fleming site.^[8] As part of his supervisory duties, the Applicant attended weekly meetings with GSSC's Regional Manager. These meetings were held to review issues and discuss specific problems at each account, receive information from site supervisors about any issues raised by clients, and relay information to site supervisors. The Applicant was expected to discuss any security issues that arose at the Fleming site.^[9] Although Midwest Patrol's Regional Manager repeatedly asked the Applicant to set up a meeting between he and the Fleming employee responsible for the contract to negotiate the renewal of the contract, the Applicant did not arrange such a meeting.^[10] The Applicant also pointed out an error in a Midwest Patrol invoice to Fleming without telling Midwest Patrol of the error or attempting to fix the error, and met with Fleming to review a number of Midwest Patrol invoices for errors without informing Midwest Patrol of the situation.^[11] The Applicant told Midwest Patrol's Regional Manager that everything was "going fine" at the Fleming site and never told him about Fleming's reported concerns.^[12]

7. In January of 1996, Fleming asked the Applicant and Robert J. Boso (another security guard employed by Midwest Patrol at the Fleming location) if they could perform security services for Fleming. The Applicant was still employed by Midwest Patrol at this time, and the Midwest Patrol contract had not yet expired. The Applicant told Fleming that he could provide security services for the company and also explained the advantages that he could provide over Midwest Patrol, such as better communication and less turnover among security officers. The Applicant signed a Certificate of Assumed Name for the name "Northman Security" on January 16, 1996. While still employed by Midwest Patrol and during the term of the Fleming-Midwest Patrol contract, the Applicant approached the best Midwest Patrol security guards stationed at the Fleming site and offered them jobs with Northman Security if he got the Fleming contract.^[13] The Applicant never told any Midwest Patrol management personnel that he had agreed to take over the Fleming account or that he had offered jobs to certain Midwest Patrol security guards.^[14]

8. In late February of 1996, Midwest Patrol received a contract termination notice from Fleming. When Midwest Patrol's Regional Manager asked the Applicant why Fleming had chosen to terminate the contract, the Applicant told him that he "had nothing else to say to [the Regional Manager] about the matter" and that the Regional Manager could consider the Fleming notice of termination as the Applicant's 30-day notice of resignation. The Applicant refused to report to Midwest Patrol's regional office on March 1, 1996, and refused to relay any information he gained about Fleming as site supervisor.^[15] On March 3, 1996, Gerald Siedlecki, the former Midwest Patrol post supervisor at the Fleming site, was told by Mr. Boso that discussions about changing security companies had begun months before and that officers who would not be going with Northman Security had had their security access codes deleted from the Fleming computer system that controlled the security system at the Fleming site.^[16]

9. On March 4, 1996, Mr. Siedlecki delivered suspension letters to Mr. Boso for Mr. Boso and the Applicant. Mr. Boso went to the guard shack, "secured" the computer system that monitored the Fleming plant, and locked Mr. Siedlecki out of the security office in the adjoining trailer. The securing of the computer system caused

alarms to sound as people moved around in the Fleming warehouse and office. Because their access codes had been deleted from the computer, the Midwest Patrol guards could not turn off the alarms sounding inside the guard shack. They also could not turn off the entire computer system because then they would be unable to monitor the fire, intruder, and freezer alarms. Mr. Boso left the Fleming property and told Mr. Siedlecki that no security guards would show up for the night shift. Because the computer system had been locked down and Midwest Patrol was unable to regain access to the system, the facility was not in a safe condition. After some discussion with Fleming, Midwest Patrol conceded its security responsibilities to Northman Security.^[17]

10. Later on March 4, 1996, the Applicant delivered a proposed Fleming - Northman Security contract to Fleming, and the contract was signed on behalf of Fleming. The Applicant used information in the Midwest Patrol contract in making his offer and preparing the contract, and copied significant parts of the Midwest Patrol – Fleming contract.^[18] Within approximately one hour of Midwest Patrol's forced abandonment of the Fleming contract, Northman Security was operating at the Fleming site.^[19]

11. GSSC filed a civil action against the Applicant, Mr. Boso, and Northman Security in St. Louis County. On June 9, 1998, Judge Terry C. Hallenbeck issued Findings of Fact and Conclusions of Law and Order for Judgment and Judgment in the case. Judge Hallenbeck concluded as follows with respect to the Applicant:

- a. The Applicant breached his fiduciary duty of loyalty owed to Midwest Patrol by failing to report Fleming's concerns to Midwest Patrol thereby denying Midwest Patrol an opportunity to correct any performance deficiencies, negotiating a contract for Northman with Fleming while employed by Midwest Patrol, and recruiting and hiring Midwest Patrol's other employees while employed by Midwest Patrol.^[20]
- b. The Applicant tortiously interfered with Midwest Patrol's contract with its employees.^[21]
- c. The Applicant deprived Midwest Patrol of the opportunity to renew its contract with Fleming and thereby tortiously interfered with prospective contractual relations by purposely failing to give Midwest Patrol information about the Fleming account and pointing out billing errors to Fleming, but never bringing the errors to Midwest Patrol's attention.^[22]
- d. The Applicant unfairly competed against Midwest Patrol by willfully breaching his employment related duties and lulling Midwest Patrol into believing that the contract would be renewed because he never told Midwest Patrol of any of Fleming's concerns and told Midwest Patrol that everything was fine when he knew otherwise.^[23]
- e. The Applicant breached the policies and procedures set forth in Midwest Patrol's personnel policy manual by plagiarizing the contract

that contained confidential pricing information and using it for Northman's benefit, using information in the Midwest Patrol contract and proposal at Midwest Patrol's expense and for the unfair benefit of Northman Security, and obtaining economic value for Northman Security from the use of the Midwest Patrol contract as a blueprint for drafting the Northman contract.^[24]

12. Judge Hallenbeck ruled that GSSC was entitled to recover the profits of Northman Security and the Applicant for the periods of March 1996 to December 1996 and all of calendar 1997 in the amount of \$32,778 and that Midwest Patrol was entitled to recover compensation paid to the Applicant while he was in breach of his duty of loyalty to Midwest Patrol in the amount of \$3,022.24. The Court also ruled that Midwest Patrol was entitled to recover compensation paid to Mr. Boso while he was in breach of his duty of loyalty to Midwest Patrol in the amount of \$3,317.60. All Defendants were held to be jointly and severally liable for costs and disbursements.^[25] The Court further concluded that the conduct of the defendants, while wrongful, was not so egregious as to merit an award of punitive damages.^[26]

13. In his Memorandum, Judge Hallenbeck concluded that the Applicant "was by far the more active participant with Mr. Boso constituting a helpmate in a process which had its genesis in the mind of [the Applicant]."^[27]

14. The Applicant has satisfied the judgment against him in the suit filed by GSSC.^[28]

15. Since 1996, the Applicant has continued to provide, on a contract basis, security services to Fleming Foods. He continues to be responsible for overall security at Fleming's Superior, Wisconsin facility. In this regard, he is responsible for monitoring fire protection equipment, traffic control, crowd/personnel control, heavy equipment control and positioning, and conducting daily and nightly rounds. Fleming's Distribution Manager stated in the Documentation of Work Experience form submitted to the Board that the Applicant has "[w]ell rounded exposure to all types of security needs," an "[e]xcellent record with this division," and "[o]perates his business and himself in a professional manner."^[29]

16. The Applicant has conducted security service work in Wisconsin since March of 1996 (when it obtained the Fleming contract). Northman Security received a Wisconsin private detective agency license on June 12, 1996. Its current Wisconsin license expires on August 31, 2000.^[30]

17. In Wisconsin, individual employees of a private detective agency are also required to obtain a license or permit. Prior to July 1, 1997, individual employees of a private detective agency in Wisconsin were required to obtain a permit from local law enforcement agencies. After a change in the Wisconsin law effective July 1, 1997, individual employees are required to obtain a license or a private security permit from the State Department of Regulation and Licensing.^[31] Forms typically sent to those applying for licensure as a private detective agency or a private security guard agency by the State of Wisconsin specify that, "[i]f your agency will provide private detective services, . . . you and anyone you employ who will be providing private detective services must be individually licensed as a private detective before performing those

services,” state that “[i]ndividuals working as uniformed security guards must obtain a private security guard permit from the law enforcement agency in whose jurisdiction they work as security guards,” and further specify that “[p]rivate security persons may not begin performing security guard services for a security guard company until they have received a permit from the Department of Regulation and Licensing.” Although one form indicates that “[p]rivate security personnel who are directly employed by businesses and industrial companies are not required to obtain a permit as a security person,” this exception merely applies to companies that are not in business to sell security services but employ employees to perform security services at their plants, and thus would not apply to individuals employed by a private detective agency such as Northman Security.^[32]

18. At some point in 1996-97, the Applicant and his employees went to the local law enforcement office in Douglas County, Wisconsin, where they were photographed, fingerprinted, and subjected to background checks.^[33] There is no evidence that the Applicant failed to comply with Wisconsin law during 1996-97 with respect to the permits required at that time to be issued to individual employees.

19. Although the Applicant himself and several employees were used to carry out the operations of Northman Security in Wisconsin, the Applicant and his employees were not issued individual licenses or permits in Wisconsin during the period of time between July 1, 1997, and March, 1999 (or later in the case of certain employees).^[34]

20. The Applicant is now in compliance with Wisconsin licensing requirements with respect to the issuance of licenses or permits to his agency and individual employees. The Wisconsin licensing authority has not brought any disciplinary proceedings against the Licensee.^[35]

21. The Applicant is currently employed by the Holiday Inn in downtown Duluth as Director of Security. He has supervised six to eight people on the security staff in this position. The Applicant and other security personnel patrol the hotel, parking ramp, restaurants, and a mall area. The General Manager of the Holiday Inn has been pleased with the Applicant’s services and finds him to be very professional, highly skilled, and an outstanding supervisor. The Duluth Police Department community police officer assigned to the Holiday Center finds him competent, capable, and effective in his security work.^[36]

22. On his application for a Minnesota individual protective agent license, the Applicant was asked to list a “complete employment history” (emphasis in original). In response, the Applicant indicated, among other items, that he had worked from 1989 to the present for Gateway Foods. The Applicant indicated on the application that he had read and understood “the requirements, responsibilities and accountabilities as outlined in Minnesota State Statute 326.32 to 326.339.” He further attested to the “truthfulness and completeness of these application materials” and noted that he understood that “falsification of any portion of the application is grounds for application disqualification.”^[37] The Applicant did not disclose on his application that he had worked for Midwest Patrol in 1995-96. He did not identify Midwest Patrol as an employer until March of 1999, after the Board notified him that it had learned of the employment.^[38]

23. After receiving the Applicant's application, the Board's Executive Director began an investigation that included looking into questions regarding the Applicant's good character and possible false statements. The Executive Director contacted employment references and took into consideration such matters as whether the Applicant was disciplined, whether the Applicant was involved in any lawsuits regarding failure to perform a job properly, and whether the Applicant was able to work with other staff. The Executive Director learned of the Applicant's employment by Midwest Patrol in 1995-96 during a discussion with the Distribution Manager of Fleming. When GSSC was thereafter sent a Documentation of Work Experience/Release of Information form at the Executive Director's direction, GSSC mentioned the lawsuit against the Applicant in its response.^[39]

24. On November 29, 1999, the Applicant appeared before the Board and was questioned about his application and employment history. At that time, the Board voted 3-2 to deny the Applicant's application.^[40]

25. On December 30, 1999, the Notice and Order for Hearing in this matter was served upon the Licensee and his counsel.

26. The Board amended the Notice of and Order for Hearing at the commencement of the hearing to include the additional allegation that the Applicant made a false statement on his application form by omitting reference to his employment by Midwest Patrol, in violation of Minn. Stat. § 326.3381, subd. 3(2). The Applicant was offered the opportunity to take additional time to prepare for cross-examination of witnesses and/or reconvene the hearing to address the additional allegation, but declined to do so.

27. The Board filed a motion in limine on April 27, 2000, in which it sought to estop the Applicant from denying the findings of the St. Louis County District Court in *General Security Services Corporation v. Monson, et al.*, issued on June 9, 1998. The Board's motion was granted in an Order issued by the Administrative Law Judge on May 4, 2000. The Administrative Law Judge concluded that the Applicant was collaterally estopped from challenging the facts established in the District Court's Order. The Applicant was permitted to offer evidence at the hearing pertaining to his good character, honesty, and integrity and whether denial of his license application was warranted based upon the facts found by the District Court. The Applicant was also permitted to offer evidence relating to the Board's allegation that he provided false information on his application form and engaged in unlicensed activity while conducting security services in Wisconsin.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Private Detective and Protective Agency Services Board and the Administrative Law Judge have authority to consider the issues raised by the Board's Notice and Order for Hearing pursuant to Minn. Stat. §§ 326.3387 and 14.50.

2. The Applicant received proper notice of the charges against him and of the time and place of the hearing.

3. The Board has complied with all relative and substantive and procedural requirements of statute and rule.

4. Minn. Stat. § 326.3311 authorizes the Board to receive, review, approve, and deny applications for private detective licenses according to standards and requirements contained in Minn. Stat. § 326.32 to 326.339.

5. Minn. Stat. § 326.3382, subd. 1(2) requires that each applicant provide information relating to "all past and present occupations and employers, length of employment, and the name, address, and telephone numbers of supervisors" on the application form submitted to the Board.

6. Minn. Stat. § 326.3381, subd. 3(2) and (3), disqualifies an applicant for licensure if the applicant "made any false statement in an application for a license or any document required to be submitted to the [B]oard" or "fail[s] to demonstrate to the [B]oard good character, honesty, and integrity."

7. As the Applicant for a license, Mr. Monson has the burden of proving by a preponderance of the evidence that he meets the requirements for licensure by the Board.

8. The Applicant has failed to prove by a preponderance of the evidence that he possesses good character, honesty, and integrity, or that he did not make a false statement in his license application.

9. The Applicant has failed to prove by a preponderance of the evidence that an individual protective agent license should be issued to him.

10. As a result of the Licensee's failure to meet licensure requirements, the Board is authorized to deny his application for licensure.

Based upon the foregoing Conclusions, and for the reasons discussed in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED: that the Minnesota Private Detective and Protective Agency Services Board deny the Licensee's application for an individual protective agent license.

Dated: June 5, 2000

BARBARA L. NEILSON
Administrative Law Judge

Reported: Tape Recorded (4 tapes); no transcript prepared.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

The Board contends that the Applicant's failure to disclose Midwest Patrol as an employer on his application form for an individual protective agent license constituted an attempt to conceal his employment with Midwest Patrol and thereby prevent the Board from learning of the lawsuit stemming from that employment. The Board asserts that this omission amounts to the making of a false statement to the Board and also reflects a lack of honesty, integrity, and good character. In addition, the Board argues that the findings of the District Court concerning the Applicant's conduct while employed by Midwest Patrol shows a lack of honesty, integrity, and good character. Finally, the Board alleges that the Applicant operated in Wisconsin without a license between March 4, 1996, and June 12, 1996, and that he failed to obtain the appropriate licenses or permits for his employees between July, 1997, and March, 1999.

As set forth in the Findings above, the Administrative Law Judge ruled prior to the commencement of the hearing, on motion of the Board, that it was appropriate to apply the doctrine of collateral estoppel in this proceeding. Accordingly, the Applicant was estopped from challenging the facts established in the Order issued by the St. Louis County District Court in *General Security Services Corporation v. Monson, et al.* (June 9, 1998). The Applicant was permitted to offer evidence at the hearing pertaining to his good character, honesty, and integrity and whether denial of his license application was warranted based upon the facts found by the District Court. The Applicant was also permitted to offer evidence relating to the Board's allegation that he provided false information on his application form and engaged in unlicensed activity while conducting security services in Wisconsin.

Based upon the findings of the District Court, it is apparent that the Applicant, during his employment with Midwest Patrol, acted to undermine Midwest Patrol's security services contract with Fleming by failing to discuss with Midwest Patrol errors it

had made in billing Fleming (while bringing them to the attention of Fleming), failing to convey Fleming's concerns to Midwest Patrol management (while telling Midwest Patrol that everything was "going fine" at Fleming), failing to set up meetings between Fleming and Midwest Patrol to negotiate the renewal of the Midwest Patrol contract, telling Fleming he could provide security services for Fleming and touting his advantages over Midwest Patrol, and offering jobs to Midwest Patrol security guards. Prior to the time that the Midwest Patrol contract ended, the security access codes of guards who would not be joining Northman Security were deleted from the Fleming computer system and the computer system was "secured" in a fashion that caused alarms to sound and placed the facility in an unsafe condition. As a result, Midwest Patrol found it necessary to immediately turn over its security responsibilities to the Applicant. In addition, the Applicant used information contained in the Midwest Patrol contract with Fleming in making his offer to Fleming and copied significant parts of that contract, despite provisions contained in the Midwest Patrol Personnel Policy Manual that made it clear that pricing and financial information were confidential information. The Court found that the genesis of the scheme was in the Applicant's mind and that he was by far the more active participant. The Court determined that the Applicant breached his fiduciary duty of loyalty owed to Midwest Patrol, tortiously interfered with Midwest Patrol's contract with its employees and its prospective contractual relations with Fleming, unfairly competed against Midwest Patrol, and breached the policies and procedures set forth in Midwest Patrol's personnel policy manual by plagiarizing the Midwest Patrol contract and using information contained therein for the unfair benefit of Northman Security.

The Applicant's conduct as reflected in the District Court's findings is pertinent to the Applicant's honesty, integrity, and good character. The Applicant's active efforts to undermine Midwest Patrol's contract and obtain the business with Fleming for himself while misleading Midwest about the situation at Fleming reflect a lack of honesty, integrity and good character. The actions taken by the Applicant and Mr. Boso to obtain leverage over Midwest Patrol and force it out could have placed Fleming's safety and security in jeopardy. Taking verbatim language from the Midwest Patrol contract and inserting the language in the Northman Security contract reflects dishonesty and lack of integrity, particularly in light of the personnel manual confidentiality provisions. Board Member Wohlman testified persuasively that the Applicant's actions were unethical in the industry and that, since the Applicant was unlicensed at the time he was approached by Fleming, he should not have encouraged Fleming to enter into a contract. Although the Applicant testified at the hearing that he now is aware that these actions were legally and morally wrong, his testimony in this regard was limited and unpersuasive. For example, he asked for an opportunity to consult with counsel before he was willing to say that he now feels that the conduct was morally wrong. The Applicant's testimony did not seem to reflect any sincere belief that he was wrong to act the way he did or any assurance that he would not commit similar misconduct in the future.

Moreover, the Administrative Law Judge is not persuaded that the Applicant merely forgot to set forth his employment with Midwest Patrol on the application form or that he viewed his employment as being solely with Fleming. Any misperception that the Applicant may have had about the identity of his employer during 1995-96 should

have been laid to rest during his litigation with Midwest Patrol. The District Court's decision was issued in June, 1998; the Applicant's application with the Board was filed in October, 1998. Due to the Applicant's recent involvement in a lawsuit involving Midwest, it is not likely that the Applicant would have forgotten this employment even though he had previously been a long-term employee of Fleming. The Applicant's additional explanation that he did not want to include Midwest Patrol on the application form because he did not want to make matters "more confusing" for the Board is also not found to be credible. The Board's application form makes it clear that applicants are expected to "LIST BELOW A COMPLETE EMPLOYMENT HISTORY" (emphasis in original) and attest that the information contained in the application is true and complete. The form also includes an acknowledgment that applicants understand that falsification of any portion of the application is grounds for disqualification. Despite these warnings, the Applicant failed to mention his employment with Midwest Patrol. Under the circumstances, it is likely that the Applicant was simply trying to conceal his employment with Midwest Patrol and the resulting lawsuit. This concealment amounts to the making of a false statement on the application and casts further doubt on the Applicant's honesty, integrity, and good character. Because protective agents hold positions of responsibility and trust, they must adhere to high standards of honesty, integrity, and good character. The Applicant has not demonstrated that he meets those standards.

It is also apparent that the Applicant operated in Wisconsin without appropriate licensure for some period of time. At a minimum, the Applicant did not obtain licensure for his agency until June 12, 1996, approximately three months after the agency took over the Fleming security operations, and the Applicant did not ensure that his employees obtained the proper licenses or permits between July 1, 1997, and March, 1999 (or later, with respect to certain employees). The Applicant testified that he did require his employees to obtain local law enforcement permits at some point in 1996 or 1997. The Board acknowledged that there might be some question whether the Applicant was out of compliance for the entire period of 1996-99. The Administrative Law Judge concludes that the Board has not established non-compliance with Wisconsin requirements during 1996-97. There was, however, a significant period of unlicensed activity in Wisconsin. Although the Applicant testified that he was not aware at the time of the change in the law that occurred on July 1, 1997, he should have known of these requirements, particularly because the forms typically sent to license holders in Wisconsin clearly informed them of the license and permit requirements. The Judge does not credit the Applicant's testimony that he never received these forms. The Applicant thus operated for three months in 1996 without proper agency licensure and for approximately 20 months between July, 1997, and March, 1999, without proper employee licensure or permits.

This conduct violated Wisconsin statutes and rules adopted by the Wisconsin Department of Regulation and Licensing. Under the Wisconsin statutes, any person who acts as a private detective, investigator, or private security person or employs another to perform services as a private detective, investigator, or private security person in Wisconsin "without having procured the license or permit required by this section [Wis. Stat. § 440.26(b)(8)]" is subject to a fine of \$100-\$500, imprisonment of 3-6 months, revocation or suspension of the agency's license, and resulting ineligibility for

relicensure for one year. The rules adopted by the Wisconsin Department of Regulation and Licensing specify (with one exception not relevant here) that “a person shall obtain a private detective agency license” before “[a]cting as a private detective, private investigator, investigator or private security person,” “[a]cting as a supplier of private security personnel,” “[s]oliciting business or performing any other type of service or investigation as a private detective or private security person,” or “[r]eceiving any fees or compensation” Wis. RL 31.01(1)(a)(2)-(5). In addition, Wis. RL 35.01(13) specifies that the Department may deny an application upon proof that the agency owner has engaged in conduct reflecting adversely on professional qualification, including “[a]ssigning any person to perform private detective or security personnel duties who has not been issued a license or permit prior to performing the services” As a result, it was not appropriate for the Applicant to operate in Wisconsin without a proper agency license or utilize employees who had not obtained the necessary licenses or permits. The failure to obtain appropriate permits or licenses is important, particularly because security guards are placed in positions of responsibility and trust and it is, accordingly, important to ensure that employees are subjected to background checks. While the unlicensed activity in Wisconsin provides further support for the denial of the Applicant’s application, it must be taken into consideration that the Applicant took action to comply once the matter was brought to his attention and the Wisconsin Department of Regulation and Licensing has not deemed it appropriate to take disciplinary action against the Applicant for this situation.

B.L.N.

^[1] Ex. 3; Testimony of Ohman.

^[2] Testimony of Monson.

^[3] Ex. 2; Testimony of Ohman, Monson.

^[4] Exs. 2, 3, 4 at ¶¶ 6-12; Testimony of Ohman, Monson.

^[5] Exs. 2, 4 at ¶¶ 11, 48-57.

^[6] Ex. 4 at ¶ 16.

^[7] Ex. 4 at ¶¶ 17-18.

^[8] Ex. 4 at ¶ 21.

^[9] Ex. 4 at ¶ 22.

^[10] Ex. 4 at ¶¶ 24-33.

^[11] Ex. 4 at ¶¶ 30-33.

^[12] Ex. 4 at ¶ 43.

^[13] Ex. 4 at ¶ 36-42.

^[14] Ex. 4 at ¶ 43.

- [\[15\]](#) Ex. 4 at ¶¶ 45-46.
- [\[16\]](#) Ex. 4 at ¶ 47.
- [\[17\]](#) Ex. 4 at ¶ 50.
- [\[18\]](#) Ex. 4 at ¶¶ 54-55.
- [\[19\]](#) Ex. 4 at ¶ 56.
- [\[20\]](#) Ex. 4 at Conclusion A(1).
- [\[21\]](#) Ex. 4 at Conclusion B(3).
- [\[22\]](#) Ex. 4 at Conclusion C(4).
- [\[23\]](#) Ex. 4 at Conclusion D(5).
- [\[24\]](#) Ex. 4 at Conclusion E(6)-(9).
- [\[25\]](#) Ex. 4 at Conclusion (F)(1)-(6).
- [\[26\]](#) Ex. 4 at Memorandum (6).
- [\[27\]](#) Ex. 4 at Memorandum (1).
- [\[28\]](#) Testimony of Monson; Ex. 5 at 6.
- [\[29\]](#) Exs. 2, 3; Testimony of Monson.
- [\[30\]](#) Exs. 2, 6; Testimony of Ohman.
- [\[31\]](#) Wis. Stat. § 440.26; Exs. 6-7; Testimony of Ohman.
- [\[32\]](#) Exs. 8, 13; Testimony of Ohman.
- [\[33\]](#) Testimony of Monson.
- [\[34\]](#) Testimony of Ohman.
- [\[35\]](#) Exs. 6, 7, 12; Testimony of Ohman.
- [\[36\]](#) Ex. 2; Testimony of Stein, Scherer.
- [\[37\]](#) Ex. 3.
- [\[38\]](#) Exs. 10, 11; Testimony of Ohman.
- [\[39\]](#) Testimony of Ohman; Ex. 3.
- [\[40\]](#) Ex. 5.